

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti 4/4/23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MALCOLM PITT,

Plaintiff,

v.

ROCKLAND COUNTY; SERGEANT
OBLENIS; SERGEANT LOWE;
CORRECTION OFFICER KARNEY;
CORRECTION OFFICER G. VANDUNK;
OFFICER FIGUEROA; and OFFICER
SPENCER,

Defendants.
-----X

ORDER

22 CV 8356 (VB)

Plaintiff, who is incarcerated and proceeding pro se and in forma pauperis, commenced this action on September 29, 2022. (Doc. #2). By the Amended Order of Service dated November 30, 2022 (Doc. #17), and the Order and Second Amended Order of Service dated March 6, 2023 (Doc. #23), the Court summarized the relevant procedural history of this case.

Because plaintiff is proceeding in forma pauperis, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. Walker v. Schult, 717 F.3d 119, 123 n.6 (2d Cir. 2013). By the Amended Order of Service dated November 30, 2022, the Court directed the Clerk to (i) add Officer Spencer to the docket, and (ii) complete the USM-285 form with the address for Officer Spencer, and deliver all documents necessary to effect service on Officer Spencer to the U.S. Marshals Service. (Doc. #17). By the Order and Second Amended Order of service dated March 6, 2023, the Court extended plaintiff's Fed. R. Civ. P. 4(m) deadline to serve Officer Spencer to April 3, 2023. (Doc. #23).

To date, no proof of service as to Officer Spencer has been filed on the docket. However, on January 30, 2023, Patrick Fischer, Esq., a Principal Assistant County Attorney at the Rockland County Department of Law, filed a notice of appearance on behalf of all defendants, including Officer Spencer. (Doc. #21). In the notice of appearance, Mr. Fischer stated Officer Spencer had not yet been served. (Id.). In a letter dated March 6, 2023, Mr. Fischer again confirmed that Officer Spencer had not yet been served. (Doc. #22).

Accordingly, IT IS HEREBY ORDERED:

1. By April 11, 2023, given that Mr. Fischer has already filed a notice of appearance on Officer Spencer's behalf, and in the interest of efficient case management, Mr. Fischer shall file a letter informing the Court whether the Rockland County Department of Law is willing to accept service on behalf of Officer Spencer.

2. All defendants' time to (i) respond to the Local Rule 33.2 Demands, and (ii) answer, move, or otherwise respond to the first amended complaint, remains STAYED pending further Court Order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address listed on the docket.

Dated: April 4, 2023
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge